

In re: MARILYN SHEPARD d/b/a CEDARCREST KENNEL.
AWA Docket No. 01-0011.
Decision and Order.
Filed August 2, 2002.

AWA – Commerce clause – Intrastate commerce – Jurisdiction, subject matter.

Respondent was found to have operated as a “dealer” in sale of puppies without having obtained a USDA license in violation of the Animal Welfare Act. The Administrative Law Judge (ALJ) held that even though the Respondent operated her wholesale puppy business wholly within Missouri, utilized a Missouri bank, and sold puppies exclusively to a Missouri pet retailer that the USDA had jurisdiction despite the lack of interstate activity citing a contemporaneous opinion of the Attorney General in the congressional record relating to the statute.

Brian T. Hill for Complainant.

Respondent - Pro se.

Decision and Order by Dorothea A. Baker, Administrative Law Judge.

Preliminary Statement

This is an administrative disciplinary proceeding initiated by a Complaint filed November 16, 2000, pursuant to the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*), hereinafter sometimes referred to as the "Act," and the regulations and standards (9 C.F.R. § 1.1 *et seq.*) issued pursuant to the Act. The Complaint charged the Respondent with having willfully violated, on July 21, 1999 and October 21, 1999, provisions of 9 C.F.R. § 3.1(a); 9 C.F.R. § 3.4(b); 9 C.F.R. § 3.6(a)(2)(x); and 9 C.F.R. § 3.6(a)(1).

In addition, said Complaint alleged that the Respondent, at all times material herein, was operating as a dealer as defined in the Act and the regulations, without having obtained a license, in willful violation of section 4 of the Act (7 U.S.C. § 2134) and section 2.1 of the regulations (9 C.F.R. § 2.1). The Respondent has denied the allegations of the Complaint and has asserted certain affirmative defenses including constitutional issues and lack of jurisdiction by the Secretary.

An oral hearing was held in Springfield, Missouri, on December 12, 2001, before Administrative Law Judge Dorothea A. Baker. Complainant was represented by Brian T. Hill, Esquire, Office of the General Counsel, United States Department of Agriculture. The Respondent appeared *pro se*. In due course the parties filed briefs and the case was referred for Decision on July 1, 2002.

An evaluation of the entire record and the evidence in this matter shows the preponderance of the evidence fails to show that the Complainant has borne its burden of proof with respect to alleged violations of 9 C.F.R. § 3.1(a); 9 C.F.R. § 3.4(b); 9 C.F.R. § 3.6(a)(2)(x); and 9 C.F.R. § 3.6(a)(1).

However, the Complainant has shown that the Secretary has jurisdiction in this matter and that the Respondent was operating as a dealer, as defined in the Act, without having obtained a license in willful violation of section 4 of the Act and

section 2.1 of the regulations. The Complainant seeks a sanction of \$26,000.00 and a permanent disqualification of the Respondent from ever obtaining an Animal Welfare Act license. Although sanctions are imposed herein they are not of the magnitude requested by the Complainant.

Applicable Law and Regulations

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—ANIMAL WELFARE

PART 1—DEFINITION OF TERMS

§ 1.1 Definitions.

For the purposes of this subchapter, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also signify the plural and the masculine form shall also signify the feminine. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

...

Dealer means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section, unless such store sells any animals to a research facility, an exhibitor, or a dealer (wholesale); or any person who does not sell, or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than \$500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats, during any calendar year.

PART 3—STANDARDS

SUBPART A—SPECIFICATIONS FOR THE HUMANE HANDLING, CARE, TREATMENT, AND TRANSPORTATION OF DOGS AND CATS

[Footnote omitted]

FACILITIES AND OPERATING STANDARDS

§ 3.1 Housing facilities, general.

(a) *Structure; construction.* Housing facilities for dogs and cats must be designed and constructed so that they are structurally sound. They must be kept in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals from entering.

...

(c) *Surfaces—(1) General requirements.* The surfaces of housing facilities—including houses, dens, and other furniture-type fixtures and objects within the facility—must be constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled . . .

§ 3.4 Outdoor housing facilities

...

(b) *Shelter from the elements.* Outdoor facilities for dogs or cats must include one or more shelter structures that are accessible to each animal in each outdoor facility, and that are large enough to allow each animal in the shelter structure to sit, stand, and lie in a normal manner, and to turn about freely. In addition to the shelter structures, one or more separate outside areas of shade must be provided, large enough to contain all the animals at one time and protect them from the direct rays of the sun. Shelters in outdoor facilities for dogs or cats must contain a roof, four sides, and a floor, and must:

(1) Provide the dogs and cats with adequate protection and shelter from the cold and heat;

(2) Provide the dogs and cats with protection from the direct rays of the sun and the direct effect of wind, rain, or snow;

(3) Be provided with a wind break and rain break at the entrance; and

(4) Contain clean, dry, bedding material if the ambient temperature is below 50° F (10° C). Additional clean, dry bedding is required when the temperature is 35° F (1.7° C) or lower.

(c) *Construction.* Building surfaces in contact with animals in outdoor housing facilities must be impervious to moisture. Metal barrels, cars, refrigerators or freezers, and the like must not be used as shelter structures. The floors of outdoor housing facilities may be of compacted earth, absorbent bedding, sand, gravel, or grass, and must be replaced if there are any prevalent odors, diseases, insects, pests, or vermin. All surfaces must be maintained on a regular basis. Surfaces of outdoor housing facilities—including houses, dens, etc.—that cannot be readily cleaned and

sanitized, must be replaced when worn or soiled.

...

3.6 Primary enclosures.

Primary enclosures for dogs and cats must meet the following minimum requirements:

(a) General requirements.

(1) Primary enclosures must be designed and constructed of suitable materials so that they are structurally sound. The primary enclosures must be kept in good repair.

(2) Primary enclosures must be constructed and maintained so that they:

- (i) Have no sharp points or edges that could injure the dogs and cats;
- (ii) Protect the dogs and cats from injury;

...

(iv) Keep other animals from entering the enclosure;

...

(x) Have floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor. If the floor of the primary enclosure is constructed of wire, a solid resting surface or surfaces that, in the aggregate, are large enough to hold all the occupants of the primary enclosure at the same time comfortably must be provided; and

(xi) Provide sufficient space to allow each dog and cat to turn about freely, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner.

Discussion

The Respondent is an individual during business as Cedarcrest Kennel and has an address of Route 2, Box 819, Ava, Missouri 65608. At all times material herein the Respondent was operating as a dealer as defined in the Act and the regulations in that, at all times material herein, she sold 284 [The Complaint alleges 284; on brief, Complainant asserts 274 and relies on its Exhibits CX 8 through 12.] dogs to a licensed dealer or dealers from on or about September 16, 1998 through March 15, 2000. She did not have a license to do so. Her principal argument of defense is that the charges against her by the United States Department of Agriculture are invalid because the Secretary lacks jurisdiction; and, that her activities are entirely intrastate and, therefore, not covered by the Act. Respondent contends the animals in question were not distributed nor shipped over State lines by her. It is maintained that because the sales of said animals occurred within the borders of the State of Missouri, such sales did not have a substantial affect upon interstate commerce. It

is maintained that the Complainant must show an actual substantial affect or burden upon commerce. The Respondent sold a substantial amount of her animals to a Mr. McMahan an animal broker within the State of Missouri and who was licensed by the State of Missouri. It was he, who after purchase of the animals, sold the animals in interstate commerce. Accordingly, Respondent argues that it was Mr. McMahan who would be responsible for any effects or burdens upon said commerce.

The fact that all of the puppies were bred, born and sold in the State of Missouri and that while Respondent had title, the puppies did not leave Missouri but were sold to an individual within the State of Missouri who subsequently sold over State lines, and who paid for the puppies from a Missouri bank, does not preclude the jurisdiction of the Secretary of Agriculture.

Applying applicable legal principles it is concluded that the Secretary of Agriculture has jurisdiction in this matter and that the Respondent was acting illegally as a dealer without a license. *See, Lloyd A. Good, Jr.*, 49 Agric. Dec. 156 (1990); and, *Wickard v. Filburn*, 317 U.S. 111 (1942). Shortly after the enactment of the 1976 amendments to the Act, the Secretary made an inquiry on the constitutionality of the Act, as amended, to the Attorney General of the United States regarding the issue of intrastate activities. (*See* _____ Op. of the Att'y Gen. _____ (Aug. 22nd, 1979) at n.2.

Referring to the Animal Welfare Act, the Attorney General opined that section 2132(c) applied to intrastate activities because

If Congress had used the conjunction "and" between subparagraphs (1) and (2), it would be at least arguable that it would not have succeeded in carrying out its plain intent to expand coverage of the Act to purely intrastate activities that affect interstate commerce. Congress, however, did not use "and" to conjoin subparagraphs (1) and (2) but rather did not use a connective word.

A copy of that referred to opinion is attached to this decision as Attachment A. In continuing to sell animals without a license, the Respondent was in willful violation of a regulatory statute in that Respondent intentionally did an act which was prohibited, irrespective of evil motive or reliance on erroneous advice and she acted with careless disregard of statutory requirements. In re: *Arab Stock Yard, Inc.*, 582 F.2d 39 (5th Cir. 1978).

On June 26, 1998 a Decision and Order were issued which suspended the license of the Respondent as of September 16, 1998. From on or about September 16, 1998, through on or about March 15, 2000, the Respondent sold, in commerce, at least 274 dogs for resale in willful violation of section 4 of the Act (7 U.S.C. § 1234) and 2.1 of the regulations 9 C.F.R. § 2.1. The sale of each animal constitutes a separate violation. Said violations require the imposition of sanctions.

Because it is found, as a matter of law that the Secretary of Agriculture has jurisdiction, the Respondent's arguments relating to alleged constitutional infringements, including the Fourth and Fourteenth Amendments lack legal validity.

When the animal welfare inspectors inspected the Respondent's facility on July 21, 1999 and October 21, 1999, they alleged that they found violations of certain standards set forth in Part 3 of 9 C.F.R.

Said violations related to assertions that the housing facilities for dogs were not structurally sound and maintained in good repair so as to protect the animals from injury as required by 9 C.F.R. § 3.1(a); that the outdoor housing facilities were not provided with adequate protection from the elements, particularly shade, as required by 9 C.F.R. § 3.4(b); that the primary enclosures for dogs were not constructed so that the floors protected the animal's feet and legs from injury, but which allowed their feet to pass through openings in the floor in violation of section 3.6(a)(2)(x); and that the primary enclosures were not structurally sound in violation of section 3.6(a)(1) (9 C.F.R. § 3.6(a)(1)). There is not sufficient, substantial, reliable evidence to sustain the aforesaid allegations of the Complainant that said violations occurred. Accordingly, they are dismissed. The evidence and testimony of the animal care inspectors: Mr. Gauthier and Ms. Feldman, were insufficient to establish by a preponderance of the evidence that Respondent's facility was not in compliance with the requirements of the Act and regulations. There was indication in the record that the superior to these inspectors indicated that he wanted to get the Respondent and to make an example of her. In addition, said animal care inspectors indicated that they would interpret the regulatory provisions as they believed them to be and not as interpreted by others in the Department. The inspectors indicated that they would write the violations according to their own interpretations and that a Judge's interpretation could be incorrect and a misinterpretation.¹ The

¹ [Inspector Gauthier, testified, among other things:

A I understand what is written here, but this is a misinterpretation of 3.4. Doghouses had never -- in the 12 years that I have been here, have never been allowed to have dirt floors in the doghouse. You have to have a floor in the doghouse.

Q Well, can you read this into the record then, for me, what this judge actually did say about the floors?

A He is saying that -- he is reading that the compact earth is -- the compact earth is all right in the outside runs. He misinterpreted the regs.

Q You really need to read that. You're just -- you're telling what your interpretation of the judge's interpretation.

A I'm telling you USDA's interpretation of the regs. Section 3.4. Is that -- this is where we're at. Right? The doghouse itself.

application of the regulatory requirements is to a certain extent subjective.²

Q Right.

A "Shelters and outdoor facilities for dogs and cats must contain a roof, four sides, and a floor." However, Section 3.4(c) goes on to say that the floor of outdoor housing facility may be of compact earth. A view of this regulatory may -- "I find that Respondent did not violate the standards by using compacted earth as floor of the calf huts."

That was a misinterpretation.

JUDGE BAKER: Did the judicial officer agree with Judge Hunt on that?

MS. SHEPHERD: Yes, he did, (Tr. 30:7-25; 31:1-9).

²Inspector Feldman:

Q Does it say anywhere in the regulations on how a gate is to be secured?

A Not specifically how but that it must be secured.

Q But how? Does it say how?

A It doesn't specify how.

Q Then if it's not closed -- if it's closed and is serving its purpose, is it not closed --

A I don't see how it's serving a purpose if it's not secured.

Q Does the USDA have regulations on how gates --

A No, ma'am.

Q -- should be secured?

A We leave it up to the individual on how they do that.

Q So this gate is --

A But it does not -- but this gate is not --

Q This gate is closed, however.

A This gate is leaning up against the post and the other gate. In that sense, it is closed; however, it is not secured. (Tr. 62:10-25; 63:1-4).

A I do know that the entire gate, the entire opening there was not a secure gate unit. The left-hand side I can say for sure was not attached to the vertical upright

post at all or to the other gate. I don't recall if the right-hand, larger side was physically attached to that wooden fence or not.

Q So it could have been attached from that side and hinged the other direction.

A Possibly. I don't recall. (Tr. 72:10-18).

THE WITNESS: "Two years after this letter, on May 6, 1997, USDA stated perimeter fences for dogs are not required by the Standard 62 Fed Reg 24611, 1997.

BY MS. SHEPHERD:

Q Then in -- if this is -- in that case, then those gates are not actually even required by law according to this regulation. Is that not correct?

A I can't speak to that exactly. No. I don't know.

Q They -- you did write them up as being perimeter gates or gates on the perimeter fence?

A Yes.

Q So if I don't need a perimeter fence, then the gate is kind of a moot point anyway, is it not? (Tr. 74:22-25; 75:1-10).

Q .Okay, so the dog could get in and out of this pen, then, without hurting itself going through this opening?

A. It would seem to. Yes.

Q .But you still have this classified as a too large of an opening?

A. Yes.

Q Why?

A. Because it does not adequately prevent wind and rain from entering the housing unit.

Q. There -- can you see the windbreak around the opening of that?

A. There is a piece of wood framing the opening. It does not adequately prevent wind and rain from entering the housing unit.

Q. Can you tell us approximately what the size of that windbreak is?

A. No, I cannot.

Q Can you tell us what the actual requirements for number of inches that a wind- and rainbreak has to be to satisfy USDA regulations?

Inspector Feldman was described as agitated and furious during one of her inspections. When such inspections are tainted with preconceived ideas, then the outcome cannot be considered a fair evaluation of the circumstances under which the inspections occurred. [Footnotes 1 and 2 are included as endnotes in the original case - Editor.]

However, in addition to the shortcomings of the evidentiary proof or lack thereof by the Complainant, great weight has been given to the testimony of Dr. Schmidt, an extremely qualified and reliable witness (Tr. 154:5-25; 155; 156:1-2) who went over the alleged violations and showed that none occurred. He also offered his opinion that the Respondent's facility was in compliance and that she was maintaining proper regulatory procedures and requirements.

Dr. Schmidt was present during one of the inspections and his review of the situation has been accorded great weight. Clearly the Complainant has not shown by a preponderance of the evidence that the alleged facility violations occurred. The evidence seems clear that the inspectors were, for whatever reason, going out of their way to find violations. There is a lack of sufficiency of evidence on the part of the Complainant.

Findings of Fact

1. The Respondent is an individual during business as Cedarcrest Kennel whose address is Route 2, Box 819, Ava, Missouri 65608. The Respondent at all times material hereto was operating as a dealer as defined in the Act and the regulations without being licensed in willful violation of section 4 of the Act and section 2.1 of the regulations.

2. On June 26, 1998, a Decision and Order were issued which suspended the license of the Respondent as of September 16, 1998.

3. From on or about September 16, 1998 to on or about March 15, 2000, the Respondent sold in commerce at least 274 dogs for resale for use as pets without being licensed and in willful violation of the Act and the regulations.

4. The Complainant has not sustained its burden of proof with respect to the remaining allegations of the Complaint.

A. There are no specified written engineering standards on that.

Q. Then how did you determine that this was not sufficient?

A. It's a judgment call. I do not feel that this opening or this framing of wood would adequately prevent strong wind and rain or any wind and rain from entering the enclosure, or entering the housing unit. (Tr. 78:20-25; 79:1-22).

Sanctions

The Respondent is a small operation and has had previous violations of the Act. The record is devoid of any indication as to her ability to pay a monetary penalty.

The Complainant seeks a cease and desist order; the assessment of a civil penalty of \$26,000.00; and a permanent disqualification from obtaining a license under the Animal and Welfare Act and the regulations issued under the Act. Said requested sanctions appear to be excessive and not required to carry out the purposes of the Act, namely, as a deterrent to the Respondent and to others. There is no evidence of any harm or inhumane treatment of Respondent's animals. It is recognized that the recommendations of administrative officials charged with the responsibility for achieving the congressional purpose of the regulatory statute are highly relevant to any sanction to be imposed and are entitled to great weight in view of the experience gained by administrative officials during a day-to-day supervision of the regulated industry. In re: *Steven Bourk*, AWA Docket No. 01-0004, January 4, 2002. In the present case not all the charges were proven and accordingly the sanction should be related to the violations of operating without a license.

For the foregoing reasons it is believed that the following Order will achieve the purposes of the Act and is a fair disposition of the matter.

Order

1. Respondent, her agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards issued thereunder, and in particular, shall cease and desist from engaging in any activity for which a license is required under the Animal Welfare Act and Regulations without being licensed as required.

2. Respondent is assessed a civil penalty of \$5,000.00 (Five Thousand Dollars) which shall be paid by certified check or money order, made payable to the Treasurer of the United States, and forwarded to Brian T. Hill, Esq., Office of the General Counsel, United States Department of Agriculture, Room 2343, South Building, Washington, DC 20250-1417.

3. The cease and desist provisions of this Order shall become effective on the day after service of this Order on Respondent. Respondent is disqualified from obtaining an Animal Welfare Act license for thirty (30) days and continuing thereafter until she demonstrates to the Animal and Plant Health Inspection Service that she is in full compliance with the Animal Welfare Act, the Regulations, the Standards, and this Order, including the payment of the civil penalty assessed in paragraph 2 of this Order. The disqualification provisions of

this Order shall become effective on the day after service of this Order on Respondent.

4. This Decision and Order shall become final and effective thirty-five (35) days after service thereof upon the Respondent unless there is an appeal to the Judicial Officer within thirty (30) days pursuant to the Rules of Practice and Procedure, 7 C.F.R. § 1.145.

Copies hereof shall be served upon the parties.

Attachment A

August 22, 1979

**79-61 MEMORANDUM OPINION FOR THE
SECRETARY OF AGRICULTURE**

**Animal Welfare Act (7 U.S.C. § 2131 et seq.)—
Commerce—Application to Intrastate Activity**

This is in response to your request for the opinion of the Department of Justice on the scope of coverage of the Animal Welfare Act, 7 U.S.C. § 2131 et seq. Specifically, you inquire whether the Act applies to activities that are entirely intrastate. The occasion for your question is the recent refusal by the U.S. Attorneys for the Eastern District of Pennsylvania and the Eastern District of Illinois to prosecute cases referred to them by your Department on the ground that the Act extends only to interstate transactions. For reasons stated hereafter, we believe that Congress intended the Act to cover purely intrastate activities otherwise falling within its provisions.³

The Animal Welfare Act was enacted in 1966 as Pub. L. No. 89-544, 80 Stat. 350. As stated in its preamble, its purpose was "to prevent the sale or use of dogs and cats which have been stolen, and to insure that certain animals intended for use in research facilities are provided humane care and treatment," by regulating certain activities "in commerce." This term was defined in § 2(c) of the Act as follows:

The term "commerce" means commerce between any State, territory,

³Nothing in this opinion should be viewed as expressing our views on any question other than the narrow legal issue regarding the general application of the Animal Welfare Act to purely intrastate activities. [Note -This was footnote No. 1 in the original text - Editor]

possession, or the District of Columbia, or the Commonwealth of Puerto Rico, and any place outside thereof; or between points within the same State, territory, or possession, or the District of Columbia, or the Commonwealth of Puerto Rico, but through any place outside thereof; or within any territory, possession, or the District of Columbia.

In 1970, the definitional section of the Act was amended. The definition of "commerce" in § 2(c) was expanded to include "trade traffic . . . [and] transportation," as well as "commerce." A new § 2(d) added a new definition for "affecting commerce:"

The term "affecting commerce" means in commerce or burdening or obstructing or substantially affecting commerce or the free flow of commerce, or having led or tending to lead to the inhumane care of animals used or intended for use for purposes of research, experimentation, exhibition, or held for sale as pets by burdening or obstructing or substantially affecting commerce or the free flow of commerce.

According to the House report accompanying the 1970 bill, this addition was

intended to broaden the authority under the Act to regulate persons who supply animals which are intended for use in research facilities, for exhibition, or as pets. [H. Rept. 1651, 91st Cong., 2d sess. 9 (1970).]

More important, subsequent sections of the Act regulating specific activities were revised to cover activities "affecting commerce," rather than simply those "in commerce." *See, e.g.*, § 4, 7 U.S.C. § 2134 (transportation of animals); § 11, 7 U.S.C. § 2140 (identification of animals for transportation). We believe these amendments reflect Congress' intention to expand the Act's coverage beyond those activities that are "in commerce" in the strict sense and to reach activities that merely "affect" interstate commerce. This expanded coverage in turn reflects Congress' determination that certain specified activities have a sufficient effect on commerce among the States to require regulation, even if they take place entirely within one State.

The 1976 Amendments to the Animal Welfare Act confirm Congress' intent that the Act should extend to intrastate activities. Its preamble, § 1(b), 7 U.S.C. § 2131(b), was revised to incorporate the specific congressional findings underlying the regulatory system imposed by the Act. It now reads in pertinent part as follows:

The Congress finds that animals and activities which are regulated under this Act are either in interstate or foreign commerce or substantially affect such

commerce or the free flow thereof, and that regulation of animals and activities as provided in this Act is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce [Emphasis added.]

If there had been any doubt of the coverage of the Act prior to 1976, the amended preamble makes clear that all activities regulated under the Act, including those confined to a single State, are governed by its provisions.

In further clarification of this point, the definition of "commerce" itself now found in 7 U.S.C. § 2132(c) was revised to consolidate former §§ 2(c) and 2(d), so that the term "commerce" as used in the Act includes both traffic between States and traffic that merely "affects" such interstate traffic generally:

The term "commerce" means trade, traffic, transportation, or other commerce—

(1) between a place in a State and any place outside of such State, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia;

(2) which affects trade, traffic, transportation, or other commerce described in paragraph (1).

We believe that this provision, read in the context of the other provisions of the Act and its legislative history, must be construed to provide two distinct definitions of "commerce" for purposes of the Act's coverage.⁴ Any other construction would make meaningless, or at best redundant, the 1970 and 1976 amendments to the Act. We are, therefore, of the opinion that the Animal Welfare Act applies to activities that take place entirely within one State, as well as to those that involve traffic across State lines.

LARRY L. SIMMS
Deputy Assistant Attorney General
Office of Legal Counsel

⁴If Congress had used the conjunction "and" between subparagraphs (1) and (2), it would be at least arguable that it would not have succeeded in carrying out its plain intent to expand coverage of the Act to purely intrastate activities that affect interstate commerce. Congress, however, did not use "and" to conjoin subparagraphs (1) and (2) but rather did not use a connective word. [Note- This was footnote No. 2 in the original text - Editor]

